

Bill Memo

SB 379 – Generally revise county zoning laws

Sponsor: Sen. Alan Olson

Hearing

Senate Local Government, Friday, Feb. 18, 3 p.m., Rm 405

Bill Purpose:

The purpose of this bill is to revise the procedures that county commissioners must follow when adopting or amending a zoning district or zoning regulation pursuant to 76-2-101, et seq. and 76-2-201, et seq. Specifically, this bill revises property owners' right to protest proposed zoning actions set forth in 76-2-101(5) and 76-2-205(6) by: 1. Establishing a new process for landowners to protest a zoning action; 2. Establishing strict guidelines under which a county commission can override a successful landowner protest; and 3. providing heightened process and findings requirements where commissioners propose a zoning action. In essence, this bill strikes a better balance between established Montana public policy protecting landowners' rights and the need for local government to lawfully exercise its police power under existing law.

Montana has a strong public policy in favor of protecting landowners' property rights. See Montana Constitution, Article II, Sections 3 and 29, MCA 76-2-901 ("It is [] the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances"). The legislative history of the protest provisions currently in 76-2-205(6) and 76-2-101(5) also highlight the Legislature's desire to protect landowners, particularly large landowners, from government action that negatively impacts their ability to use their land for legitimate purposes. The creation of a landowner protest right was a response to concern expressed by many citizens that a county commissions' power to zone land gave the government too much control over private citizens' property. See e.g., Chapter 246, 1963, Bill H. 262. The 50% protest provision for agricultural and forest landowners was specifically inserted to "equalize zoning" between large landowners and small landowners, and "make an even playing field" by giving large landowners input in zoning decisions that affect their land. See Chapter 592, 1995, Bill H358.

Existing law, including 76-2-101(5) and 76-2-205(6), has not been held unconstitutional, but is the subject of two constitutional challenges pending in Montana courts. The existing protest provisions allow landowners to protest and *completely halt* the proposed zoning regulation or amendment for one year. This can be done in perpetuity, effectively allowing protesting landowners to protest and thereby halt proposed zoning regulations year after year. Should the existing protest provisions be deemed unconstitutional, they will be stricken from the statute, leaving landowners completely powerless, with no recourse whatsoever against zoning actions that negatively impact their ability to use their property for legitimate purposes. As such, this bill proposes a new protest provision that is constitutionally sound, while providing landowners much-needed protections against detrimental zoning actions.

Landowners advocating the abolishment of the incredibly powerful protest provision that currently exists in Montana law cannot be expected to give up this power without a considerable level of due process guaranteed to them in the zoning process. It is worth noting that no court has held the existing protest provisions unconstitutional, and the existing provisions enjoy a presumption of constitutionality. Given that this bill takes the ability to override proposed zoning regulations from landowners, it necessarily must provide them some protections on balance. This bill does this by requiring that counties: 1. are explicit regarding the health, safety and welfare goals they are seeking to protect through zoning, 2. balance these goals with the economic impact on affected landowners, and 3. make sure no less restrictive means exist to further their goals.

Despite this heightened process, it leaves the final decision in the county's hands unless: 1. a diminution of 30% of affected land's value would occur and the stated purpose of the zoning action does not outweigh this diminution or 2. less restrictive means exist. Where a zoning action diminishes value by 30% or more and such detriment is not proportional to the stated purpose behind the zoning action, or where less restrictive means exist, the proposed zoning action is not a valid use of the commissioners' police power, and should necessarily be stopped.

This bill creates a uniform procedure that commissioners must follow, regardless of whether the proposed zoning action is initiated by citizens pursuant to 76-2-101, or by commissioners themselves pursuant to 76-2-201. With regard to zoning initiated by citizens, commonly termed "Part 1 zoning," this bill *in no way* strips citizens of the ability to initiate proposed zoning actions, and *only applies* to the ultimate decision by commissioners to adopt proposed zoning actions. When adopting a zoning district, commissioners must lawfully exercise their police power, and cannot adopt zoning districts that would jeopardize the "public health, safety, morals and general health." 76-2-201. Because commissioners must comply with their mandate to protect public health, safety, morals and general health when adopting zoning districts pursuant to Part 1, it is logical that they should comply with the procedures required when adopting zoning regulations pursuant to Part 2.

Analysis by Section

WHEREAS, exercise of the police power by a governmental entity must be balanced against the legitimate use of private property and other constitutional protections, including Article II, section 29, of the Montana Constitution, which prohibits the taking of private property for a public use without just compensation; and

WHEREAS, the government in its exercise of the police power may not disproportionately require some property owners to bear the burdens of advancing the public health, safety, morals, and general welfare when such burdens should be borne by the public as a whole; and

WHEREAS, private property rights may be negatively affected by zoning regulations, districts, and amendments that restrict allowable land uses and reduce the value of property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose. The purpose of [sections 1, 2, 4 through 9, 11, and 12] is to protect real property owners from unreasonable land use restrictions and reductions in land value due to county zoning by:

- (1) ensuring that owners of real property affected by a proposed zoning action have the right to protest;
- (2) providing that a board of county commissioners may not proceed with a zoning action if there is a successful protest except under certain circumstances;
- (3) providing additional procedures for factfinding and public involvement if a board of county commissioners seeks to override a successful protest; and
- (4) clarifying that owners of real property affected by a zoning action may challenge the zoning action in a court of competent jurisdiction.

Rationale:

This section sets forth the purpose of the bill, which includes protecting landowners from unreasonable restrictions on their land by providing heightened process for zoning decisions and instituting a constitutionally-sound protest provision. Given that the proposed amendment takes the ability to override proposed zoning regulations from landowners, it is necessary to be clear that the purpose of this bill is not to provide a "blank check" to county commissioners.

NEW SECTION. Section 2. Definitions. For purposes of [sections 1, 2, 4 through 9, 11, and 12], the following definitions apply:

- (1) (a) "Affected property" means property taxed on an ad valorem basis on the county tax rolls and directly subject to a proposed zoning action.
- (b) The term does not include adjoining or neighboring property.
- (2) "Affected property owner" means the owner of affected property, including natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity owning land in fee simple, as joint tenants, or as tenants in common.
- (3) "Protest override procedure" means the procedures described in [sections 6 through 9].
- (4) "Protesting landowner" means an affected property owner who protests a zoning action.
- (5) "Successful protest" means a protest by owners of 25% or more of the affected property.
- (6) "Zoning action" means the establishment or revision of boundaries for a zoning district and any adoption or amendment of zoning regulations.

Rationale:

This definitional section provides definitions for terms used throughout the bill. The definition for "successful protest" requires 25% of affected landowners to protest. The vast majority of states with protest provisions in their zoning statutes utilize the 20% protest percentage.¹ Montana's municipal zoning statute, MCA 76-2-305, utilizes 25%. Amending the proposed amendments to 25% to be in keeping with 76-2-305 is a reasonable compromise. Further increasing the number is unreasonable given the context in which these amendments are set forth. As the law is written, although the protest percentage requirement is higher, successful protesting landowners have considerably more power, as they can effectively stop a proposed zoning action. A lower number is necessary given that this amendment strips landowners of this ultimate decision-making power, and places that power in the hands of the local government.

Section 3. Section 76-2-101, MCA, is amended to read:

"76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of ~~subsection (5)~~ [section 5], whenever the public interest or convenience may require and upon petition of 60% of the affected real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in ~~subsection (5)~~ [section 5], an action challenging the creation of a planning and zoning district must begin within 6 months after the date of the order by the board of county commissioners creating the district.

~~(5) If real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."~~

¹ See Arizona, A.R.S. 11-829 (20%), Colorado, §31-23-305 (20%), Connecticut, C.G.S.A. Sec. 8-3 (20%), Delaware, 22 Del. C. §305 (20%), Illinois, 60 ILCS 1/Div. 51-2014, 60 ILCS 1/Art. 110.60, 65 ILCS 5/11314 (20%), Kansas, K.S.A. 12-757, 19-2951, 19-2960 (20%), Louisiana, §140.55, 33 §4725 (20%), Massachusetts, §5 (20%), Michigan, 125.3403 (20%), Mississippi (20%), Missouri, §64.140, 64.670, 89.060 (30%), Nebraska, 23-165, 14-405 (20%), New Hampshire, 675.5 (20%), New Jersey, N.J.S.A. 40:55D-63 (20%), New Mexico, N.M.S.A. §3-21-6 (20%), New York, General City Laws, §83, New York Town Laws, §265, New York Village Laws, §7-708 (20%), North Carolina Gen. Stat. §160A.385 (owners of 20% of affected land or owners of 5% of land within 100 feet of affected land), North Dakota, §40-47-05 (20%), Oklahoma, 19 Ok. Stat. §863.17 (20%), Texas, V.T.C.A. Local Government Code §211.006(d) (20%); Wisconsin, W.S.A. 59.69 (5)(g) ad 62.23 (2m)(a) (50% (county), 20%, (city)), Wyoming, W.S. 1977 §15-1-603 (20%).

Rationale:

This section strikes the existing protest provision and replaces it below with a modified protest provision. As noted above, the existing protest right is facing constitutional challenges in two separate legal proceedings. The Montana Attorney General has not indicated that he will intervene to defend the statute's constitutionality. In one case involving Missoula County, the County admitted that MCA 76-2-205(6) is unconstitutional. Should the existing protest provision be found unconstitutional, landowners would be in a very vulnerable position, and would have no ability to protect themselves from zoning decisions directly affecting their land. Although 76-2-101(5) is not at issue in the pending judicial proceedings, it's near identical language to 76-2-205(6) suggests that it is equally problematic. As such, the problematic existing statute must be replaced with one that is less vulnerable to constitutional challenge, but that furthers Montana's public policy of protecting landowners.

NEW SECTION. Section 4. Procedures -- zoning action. The board of county commissioners shall observe the following procedures for taking a zoning action:

- (1) Notice of a public hearing on the proposed zoning action must:
 - (a) state:
 - (i) the boundaries of the proposed district that would be affected by the zoning action;
 - (ii) the general character of the proposed zoning action;
 - (iii) the time and place of the public hearing;
 - (iv) that the proposed zoning action is on file for public inspection at the office of the county clerk and recorder;
 - (v) a description of the public health, safety, morals, and general welfare that the board of county commissioners is seeking to protect through the proposed zoning action;
 - (b) be posted not less than 45 days before the public hearing in at least five public places, including but not limited to public buildings and adjacent to public rights-of-way within the proposed district; and
 - (c) be published once a week for 2 weeks in a newspaper of general circulation within the county.
- (2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning action.
- (3) After the public hearing, the board of county commissioners shall review the proposed zoning action and make any revisions or amendments that it determines to be proper.
- (4) The board of county commissioners may pass a resolution of intention to take a zoning action.
- (5) The board of county commissioners shall publish notice of passage of a resolution of intention to take a zoning action once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:
 - (a) the boundaries of the proposed district;
 - (b) the general character of the proposed zoning action;
 - (c) a description of the public health, safety, morals, and general welfare that the board of county commissioners is seeking to protect; and
 - (d) that for 60 days after the date that notice of the resolution of intention to adopt a proposed zoning action is first published, the board of county commissioners will receive written protests to the zoning action from affected property owners.

Rationale:

This section merely requires that commissioners adopting a zoning district pursuant to Part 1 zoning follow the requirements currently in 76-2-205(1)-(5). This section is part of a larger effort in this bill to make notice, comment, and protest procedures the same whether zoning is initiated by citizens pursuant to Part 1, or by commissioners under Part 2. Part 1 zoning is a four-step process. First, citizens petition for a zoning change. Second, commissioners decide to create a zoning commission. Third, the zoning commission creates a zoning

district. Fourth, the commissioners decide to adopt the zoning district. The proposed bill *only affects this fourth step*. The proposed amendment has *no impact whatsoever* on citizens' right to petition zoning. It is the petition aspect of Part 1 that makes it a "citizen process." Because the petition process is not affected, these amendments do not render Part 1 zoning any less of a citizen process. It simply requires that at the point where the commissioners decide to adopt or amend a district or zoning regulation, regardless of how the idea came to them, they must follow certain procedures.

NEW SECTION. Section 5. Protest. (1) Within 60 days of the date that notice of passage of the resolution of intention to take a zoning action pursuant to [section 4] is first published, affected property owners may protest the proposed zoning action by delivering written notification to the board of county commissioners.

(2) If a successful protest is not achieved, the board of county commissioners may in its discretion proceed with the proposed zoning action within 30 days of the expiration of the protest period.

Rationale:

As discussed above, this bill substitutes the existing constitutionally problematic statute for a new protest provision, the procedure for which is set forth over a number of separate sections. This section creates a 60, as opposed to 30, day protest period. This longer protest period is necessary to balance the power landowners are giving up in the proposed bill. It is noteworthy that where there is not a successful protest, commissioners may simply adopt the zoning action with no heightened notice or process requirements whatsoever.

NEW SECTION. Section 6. Override of successful protest. (1) (a) Following a successful protest, a board of county commissioners may in its discretion either abandon the proposed zoning action or, subject to [sections 6 through 9], override a successful protest and adopt the proposed zoning action by:

- (i) a unanimous vote of the county commissioners whenever a county has three commissioners;
- (ii) a vote of four elected commissioners whenever a county has five commissioners; or
- (iii) two-thirds of the elected commissioners whenever a county has more than five commissioners.

(b) A commissioner may not abstain from voting unless a proven conflict of interest exists.

(2) If the protest override procedure is not successful, the board of county commissioners may not adopt the proposed zoning action and a subsequent proposal for a zoning action may not be proposed for the affected property for a period of 1 year.

(3) Prior to holding a vote to override a successful protest, a board of county commissioners must:

(a) accept evidence and prepare findings of fact on the potential economic impact of the proposed zoning action on the property values of protesting landowners; and

(b) accept evidence and prepare findings of fact on whether no less restrictive means exist to protect the public health, safety, morals, and general welfare of the residents of the county.

(4) The board of county commissioners shall complete the findings of fact within 30 days of the public hearing and shall provide written notice to all affected property owners of its findings within 40 days of the public hearing.

Rationale:

This section lays out the new procedure when a successful protest is lodged. Pursuant to the current law, a successful protest means *the commissioners may not adopt the zoning action*. This section provides that where there is a successful protest, commissioners may adopt the proposed zoning action, but they must first provide notice and comment, make certain findings, and adopt the proposed action by unanimous vote. It is worth noting that where a successful protest is lodged, commissioners have the option to simply following the will of the protesting landowners, and not adopt the proposed regulation. Of course, this

option would mean commissioners need not go through any of the procedures required upon successful protest.

Because the proposed amendment takes the ability to override proposed zoning regulations from landowners, it necessarily must provide them some protections on balance. Requiring local government to consider lesser restrictive means and economic impact following a protest will educate the commissioners and public about the burdens of the proposed zoning, and may lead to an amended proposal that protects public health, safety and welfare while better accommodating the needs of landowners.

A requirement that a successful protest requires a subsequent unanimous vote to adopt the zoning action is necessary because most counties have 3 commissioners, therefore, a 2/3 vote requirement upon successful protest would be the same as requiring a majority vote, and would not result in any heightened process. As such, it is necessary to require a unanimous vote upon successful protest. Every other state with a zoning protest provision requires a heightened vote requirement upon successful protest. Some other states that have counties with three commissioners require a unanimous vote upon successful protest.² It is noteworthy that a unanimous vote is *only required* if there is a successful protest *and* a county has three commissioners.

Despite this heightened process, it leaves the final decision in the county's hands unless: 1. a diminution of 30% of affected land's value would occur and the stated purpose of the zoning action does not outweigh this diminution or 2. less restrictive means exist. As discussed below, this is in keeping with the Montana Private Property Assessment Act guidelines, which defines an agency action as implicating a taking if it reduces the affected land value by 30%.

With regard to fiscal impact, the amendment only requires commissioners to conduct an economic analysis and make a less restrictive means determination based on evidence *submitted by interested persons*. No separate investigation or analysis by the county is necessary, and therefore, the cost and resources required for this required analysis will be minimal, if any.

These required procedures and findings are similar to those required by commissioners when reviewing subdivision applications. Pursuant to 76-2-608, among other requirements, commissioners 1. must issue written findings of fact, 2. may not "unreasonably restrict a landowners ability to develop land", and 3, must "consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider" when considering mitigation of impact. This procedure creates dialogue between affected landowners and commissioners through hearings and submission of evidence with an aim toward reasonable local government decisions that protect health, welfare and safety, while protecting landowners. It is this type of communicative, fully informed decisionmaking that this bill seeks to institute.

NEW SECTION. Section 7. Evidence of economic impact. (1) In accepting evidence of economic impact pursuant to [section 6], the board of county commissioners shall allow any interested person to submit evidence of the potential economic impact of the proposed zoning action on the property value of a protesting landowner. Interested persons may submit any relevant evidence, including but not limited to:

- (a) evidence regarding the fair market value of property owned by a protesting landowners and any diminution in the fair market value of the property that may result from the proposed zoning action;
- (b) evidence regarding reduction in types of allowable land use that may occur as a result of the proposed zoning action;

² See e.g., Kansas, K.S.A. 19-2951, Oklahoma, 19 Ok. Stat. §863.17.

(c) evidence regarding whether the proposed zoning action deprives a protesting landowner of economically viable uses of the protesting landowner's property; and

(d) evidence regarding whether the expected benefits of the proposed zoning action are proportional to the probable impacts of the proposed zoning action on the property of protesting landowners.

(2) The board of county commissioners shall give due weight and consideration to any evidence submitted pursuant to subsection (1).

(3) (a) If a protesting landowner submits credible evidence showing that the proposed zoning action will result in a 30% or more diminution in value of the protesting landowner's property, a prima facie negative impact is established.

(b) Upon the establishment of a prima facie negative impact, the burden shifts to the board of county commissioners to determine whether credible evidence has been submitted establishing that the expected benefits of the proposed zoning action outweigh the diminution in value of each property owned by the protesting landowner.

(4) If the board of county commissioners is unable to determine by credible evidence that the expected benefits of the proposed zoning action outweigh the diminution in value of the property owned by the protesting landowner, the board of county commissioners may not adopt the proposed zoning action.

Rationale:

This section enables interested persons, including affected landowners, landowners that did not protest, and state and local agencies or organizations, to submit evidence regarding the proposed zoning action's economic impact. Commissioners need not conduct separate studies or investigations, but only must consider evidence submitted by interested parties, which creates no fiscal impact on counties.

The amendment's provision that a finding of diminution of the affected property's value by 30% or more is a prima facie negative impact and is based on the Attorney General Guidelines for the Montana Private Property Assessment Act, in which a taking is implicated where diminution of the affected property by 30% or more will result. Montana's Private Property Assessment Act, 2-10-101, et seq., recognizes economic analysis is a necessarily consideration when the government attempts to take action affecting private property. Where a taking is implicated, a government agency must consider, among other issues: 1. "Does the action deprive the owner of all economically viable uses of the property?," 2. "Does the action have severe impact on the value of the property?," and 3. "Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?" Similarly, where a successful protest is lodged, commissioners must consider the economic impact on the protesting landowners' property in order to ensure that protesting landowners' property interests are respected, and to facilitate public participation in government processes that directly affect citizens' property.

NEW SECTION. Section 8. Evidence of no less restrictive means. (1) In accepting evidence of whether no less restrictive means exist to protect the public health, safety, morals, and general welfare pursuant to [section 6], the board of county commissioners shall allow any interested person to submit any relevant evidence, including but not limited to:

(a) alternatives to the proposed zoning action to further the public health, safety, morals, and general welfare; and

(b) modifications to the proposed zoning action that would mitigate adverse economic impacts or mitigate unreasonable limitations on land uses on the property owned by a protesting landowner.

(2) The board of county commissioners shall give due weight and consideration to any evidence submitted pursuant to subsection (1).

(3) If the board of county commissioners finds that less restrictive means exist to protect the public health, safety, morals, and general welfare, the board may not adopt the proposed zoning action.

Rationale:

This section allows interested persons to submit evidence regarding whether less restrictive means exist to further public health, safety, morals or welfare. This will be decided on a case-by-case basis, and will likely be a very factually driven analysis. It is only logical that where a less restrictive way to further commissioners' goals exists, the more restrictive approach should not be adopted.

NEW SECTION. Section 9. Findings -- public notice and comment. (1) The board of county commissioners shall hold a public hearing to accept public comment regarding the protest, the evidence submitted on the economic impact of the proposed zoning action, and the evidence submitted on whether no less restrictive means than the proposed zoning action exist.

(2) Notice of the public hearing required in subsection (1) must include:

(a) a summary of the evidence submitted to the board of county commissioners on the economic impact of the proposed zoning action and on whether no less restrictive means than the proposed zoning action exist;

(b) the potential impact of the evidence submitted to the board of county commissioners on the property of protesting landowners;

(c) the time and place of the public hearing;

(d) that the evidence submitted to the board of county commissioners pursuant to [sections 7 and 8] is on file for public inspection at the office of the county clerk and recorder.

(3) Notice of the public hearing required in subsection (1) must be:

(a) posted not less than 45 days before the public meeting and in at least 5 public places, including but not limited to public buildings and adjacent to public rights-of-way within the proposed district or on the land affected by the proposed zoning action;

(b) published once a week for 2 weeks in a newspaper of general circulation within the county; and

(c) delivered via first class mail to each affected property owner.

(4) The board of county commissioners shall issue written findings of fact upon conclusion of the public hearing pursuant to subsection (1). The written findings of fact must include findings regarding:

(a) the estimated percentage, if any, of diminution in value of the property owned by a protesting landowner;

(b) any reduction in types of allowable land use on the property owned by a protesting landowner;

(c) whether the proposed zoning action deprives a protesting landowner of economically viable uses of the affected property;

(d) whether the expected benefits of the proposed zoning action are proportional to the probable impacts of the proposed zoning action;

(e) whether alternatives to the proposed zoning action exist to protect the public health, safety, morals, and general welfare;

(f) whether modifications to the proposed zoning action exist that would mitigate adverse economic impacts or mitigate unreasonable limitations on land uses on property owned by protesting landowners; and

(g) whether credible evidence exists to dispute the rationale used to support the proposed zoning action as a means to protect the public health, safety, morals, and general welfare.

(5) The written findings of fact provided by the board of county commissioners pursuant to this section may be appealed as provided in 76-2-110. An affected real property owner has 30 days from the date the real property owner receives notice of the written findings to appeal.

Rationale:

This section provides the process by which commissioners must issue findings regarding economic impact and whether less restrictive means exist, and allows for public comment and hearing regarding the findings. The requirement that a zoning decision's health, safety and welfare goals are "proportional" to its impact on affected landowners merely ensures that the zoning decision has a "substantial bearing" on the public health, safety, morals or general welfare of the community, as substantive due process and the lawful exercise of the police power require. See *Yellowstone Valley Elec. Co-op v. Ostermiller*, 187 Mont. 8, 608 P.2d 491, 496 (1980) ("a police power regulation must be reasonably adapted to its purpose and must injure or impair property rights only to the extent reasonably necessary to preserve the public welfare. . . . The standard of reasonableness is the constitutional measure of the proper exercise of the police power"); *Yurczyk v. Yellowstone County*, 319 Mont. 169, 83 P.3d 266 (2004) (finding zoning ordinance requiring on-site construction of homes did not have substantial bearing on public health, safety, morals or general welfare and therefore invalid); *Boland v. City of Great Falls*, 275 Mont. 128, 910 P.2d 890, 893 (1996) ("[a] zoning ordinance . . . will be found to be a constitutional exercise of police power if it has a substantial bearing upon the public health, safety, morals or general welfare of the community").

Section 10. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures for taking a zoning action provided in [section 4] in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

~~(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must:~~

~~—(a) state:~~

~~—(i) the boundaries of the proposed district;~~

~~—(ii) the general character of the proposed zoning regulations;~~

~~—(iii) the time and place of the public hearing;~~

~~—(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;~~

~~—(b) be posted not less than 45 days before the public hearing in at least five public places, including but not limited to public buildings and adjacent to public rights of way, within the proposed district; and~~

~~—(c) be published once a week for 2 weeks in a newspaper of general circulation within the county.~~

~~—(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.~~

~~—(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.~~

~~—(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.~~

~~—(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:~~

~~—(a) the boundaries of the proposed district;~~

~~—(b) the general character of the proposed zoning regulations;~~

~~—(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;~~

~~—(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.~~

~~—(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the real property owners within the district whose names appear on the last~~

~~completed assessment roll or if real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."~~

Rationale

This section requires that commissioners adopting a zoning district pursuant to Part 1 or regulation pursuant to Part 2 follow the same procedures. As discussed above, this bill attempts to create a uniform procedure for adopting zoning districts or regulations at the point where the commissioners decide to adopt or amend a district or zoning regulation, regardless of whether they or citizens initiated the proposed zoning action.

NEW SECTION. Section 11. Protest. (1) Within 60 days of the date notice of the resolution of intention to adopt a proposed zoning action is first published, affected property owners may protest the proposed zoning action by delivering written notification to the board of county commissioners.

(2) If a successful protest is not achieved, the board of county commissioners may in its discretion proceed with the proposed zoning action within 30 days of the expiration of the protest period.

Rationale:

This section sets forth the same protest right for Part 2 zoning as set forth for Part 1 zoning in New Section 5 above. The rationale applicable to Section 5 is equally applicable here.

NEW SECTION. Section 12. Override of successful protest. (1) Following a successful protest, a board of county commissioners may in its discretion either abandon the proposed zoning action or, subject to the protest override procedures set forth in [sections 6 through 9], override a successful protest and adopt the proposed zoning action by a vote subject to the provisions of [section 6(1)]. A commissioner may not abstain from voting unless a proven conflict of interest exists.

(2) If the protest override procedure is not successful, the board of county commissioners may not adopt the proposed zoning action and a subsequent zoning proposal may not be proposed for the affected property for a period of 1 year.

(3) Prior to holding a vote to override a successful protest, a board of county commissioners must comply with the protest override procedures provided in [sections 6 through 9].

(4) The written findings of fact provided by the board of county commissioners pursuant to [section 9] may be appealed pursuant to 76-2-226 and 76-2-227. An affected property owner has 30 days from the date the affected property owner receives notice of the written findings to appeal.

Rationale:

This section sets forth the same protest procedure for Part 2 zoning as set forth for Part 1 zoning in New Section 6 above. The rationale applicable to Section 6 is equally applicable here.